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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/523,767	03/11/2000	Eugene de Juan JR.	49.603 (1699)	5862
23702	7590 05/28/2002			
Bausch & Lomb Incorporated			EXAMINER	
One Bausch & Rochester, NY	¿ Lomb Place Y 14604-2701		BAXTER, J	ESSICA R
			ART UNIT	PAPER NUMBER
			3731	
			DATE MAILED: 05/28/2002	?

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary Examiner Jessica R Baxter 3731 The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).	·		A It - At No	\mathcal{W}
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Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449) Paper No(s) Other: Patent and Trademark Office	_			
	2) D Notice	e of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Inform	
·			Action Summary	Part of Paper No. 8

Application/Control Number: 09/523,767

Art Unit: 3731

DETAILED ACTION

Election/Restrictions

- 1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - Claims 1-22, drawn to a method for providing access within an eye during an occular surgical procedure, classified in class 606, subclass 166.
 - II. Claims 23-37, drawn to a high-speed cutting/aspirating instrument and a device kit, classified in class 606, subclass 170.
 - III. Claims 38-41, drawn to forceps, classified in class 606, subclass 205.

The inventions are distinct, each from the other because of the following reasons:

- 2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another materially different apparatus or by hand because multiple, separate tools instead of the single tool of the apparatus can perform the method.
- 3. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are not disclosed as capable of use together and have different functions. Invention II describes a kit that contains multiple instruments to be used together in a surgical procedure. Invention III discloses forceps that may or may not be utilized in the kit.

Application/Control Number: 09/523,767

Art Unit: 3731

4. Inventions I and III are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practice another and materially different process such as manipulating sutures.

- 5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
- 6. A telephone call was made to William Daley on May 13, 2002 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R Baxter whose telephone number is 703-305-4069. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on 703-308-2496. The fax phone numbers for the organization

Application/Control Number: 09/523,767

Art Unit: 3731

where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Jessica R Baxter Examiner

Art Unit 3731

jrb

May 24, 2002

MICHAÉL J. MILANO SUPERVISORY PATENT EXAMINER

TECHNOLOGY CENTER 3700